

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>EQUAL EMPLOYMENT OPPORTUNITY</b>	)	
<b>COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>CIVIL ACTION NO. 09 C 4272</b>
	)	
<b>RON ADDISON; KEVIN BENSON; J.D.</b>	)	<b>Judge Virginia Kendall</b>
<b>BLAKES; TYRONE GASTON; JIM</b>	)	
<b>HERRINGER; KENNETH HUEMMER;</b>	)	
<b>CARL MCKNIGHT; NATHANIEL</b>	)	
<b>ROBERTS; MICHAEL SMITH; RANDY</b>	)	
<b>STEVENSON; and RALPH TOWNES,</b>	)	
	)	
<b>Intervening Plaintiffs,</b>	)	
<b>v.</b>	)	
	)	
<b>WRS INFRASTRUCTURE AND</b>	)	
<b>ENVIRONMENT, INC.</b>	)	
<b>d/b/a WRS COMPASS,</b>	)	
	)	
<b>Defendant.</b>	)	

**DEFENDANT’S MOTION *IN LIMINE* NO. 1  
MOTION TO EXCLUDE EVIDENCE OF  
ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS**

Defendant WRS Infrastructure and Environment, Inc. (“WRS” or “Defendant”) respectfully moves this Court for the entry of an order *in limine* barring Plaintiffs from referencing, questioning any witnesses about or offering any evidence of attorney-client privileged communications between Defendant and its in-house counsel. In support of this motion, Defendant states the following:

1. During the October 2007 noose investigation, Defendant’s in-house counsel, Gregory Munson, provided legal advice concerning how to conduct the investigation. In addition, Munson legally advised WRS on how to respond to the two NBC news reports that

aired in February and April 2008. Given Munson's role as a legal advisor, Defendant withheld in discovery Munson's privileged communications with WRS.

2. On June 23, 2010, Magistrate Keys ordered WRS to produce certain attorney-client privileged communications (ECF # 42-43), and Judge Kendall affirmed that decision on October 25, 2010 (ECF # 60). The Court held that "By asserting the *Faragher-Ellerth* defense, documents related to a defendant's investigation are not protected by the attorney-client privilege" because the EEOC is entitled to "analyze the reasonableness of the investigation" (*id.* at p. 2). As a result, WRS was ordered to produce attorney-client privileged documents, bates labeled with the prefix "PRV."

3. Plaintiffs have listed as trial exhibits seven (7) documents claimed by WRS to be privileged (*see* Pls. Exs. 9-15). Defendant seeks to bar Plaintiffs from referencing or using those exhibits at trial or questioning any witnesses about attorney-client privileged communications with Munson.

4. While Defendant acknowledges that the *Faragher-Ellerth* defense requires an assessment of whether it acted reasonably, WRS respectfully disagrees that the underlying legal advice it received and whether it followed that advice is relevant to the reasonableness inquiry. Rather, the legal advice is relevant only if a defendant places its attorney's advice at issue and seeks to rely on that advice to claim that it conducted a good-faith investigation. *See e.g., Alberts v. Wickes Lumber Co.*, No. 93 C 4397, 1995 U.S. Dist. LEXIS 883, at \*4 (N.D. Ill. Jan. 26, 1995) ("[S]ince [defendant] intends to allege and show in support of its position that the investigation was conducted pursuant to the advice of counsel, then the advice that counsel gave during the course of the investigation relating to the investigation is clearly relevant and cannot be considered privileged. It must be emphasized that it is [defendant] that has placed the

investigation *and the advice of counsel with respect to that investigation* at issue in this case.”) (emphasis added).

5. Reliance on an attorney’s advice in an investigation is critically different from reliance upon an investigation itself. Here, WRS never put its attorney’s advice at issue when raising the *Faragher/Ellerth* affirmative defense.

6. Throughout this litigation, WRS has maintained that its defense is based only on its actual investigations themselves: the actions it took to investigate harassment complaints, without reference to whether it was following its attorney’s advice. WRS has never claimed that its affirmative defense included reliance on advice of counsel.

7. Accordingly, for the reasons stated herein and in WRS’s previously filed Objections to Magistrate Judge Order on Privileged Information (ECF # 53), Defendant respectfully requests that the Court bar Plaintiffs from referencing or using as exhibits WRS’s privileged communications with its in-house counsel and bar Plaintiffs from questioning any witnesses about those attorney-client privileged communications.

WHEREFORE, WRS respectfully requests that the Court bar all documents and testimony concerning attorney-client communications between WRS and its in-house counsel Gregory Munson.

**DATED: May 11, 2012**

Respectfully submitted,

WRS INFRASTRUCTURE AND  
ENVIRONMENT, INC.

By:           /s/ Annette Tyman            
One of Its Attorneys

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**CERTIFICATE OF SERVICE**

I, Annette Tyman, an attorney, do hereby certify that I have caused a true and correct copy of the foregoing DEFENDANT'S MOTION *IN LIMINE* TO EXCLUDE EVIDENCE OF ATTORNEY-CLIENT COMMUNICATIONS to be served upon the following counsel through the Court's electronic case filing system on this 11th day of May, 2012:

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/s/ Annette Tyman